

## Health and Human Services

352.234-1

(End of clause)

### 352.233-70 Choice of law (overseas).

As prescribed in 333.215-70(a), the Contracting Officer shall insert the following clause:

CHOICE OF LAW (OVERSEAS) (JANUARY 2010)

This contract shall be construed in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the Civilian Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

### 352.233-71 Litigation and claims.

As prescribed in 333.215-70(b), the Contracting Officer shall insert the following clause:

LITIGATION AND CLAIMS (JANUARY 2006)

(a) The Contractor shall provide written notification immediately to the Contracting Officer of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action.

(c) If the Government undertakes a settlement or defense of an action or claim, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Government shall not reimburse or indemnify the Contractor for any liability loss, cost, or expense, which the Contractor may incur or be subject to by reason of any loss, injury or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

### 352.234-1 Notice of earned value management system—pre-award Integrated Baseline Review.

As prescribed in 334.203-70(a), the Contracting Officer shall insert the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—PRE-AWARD INTEGRATED BASELINE REVIEW (OCTOBER 2008)

The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of solicitation).

(a) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Provide documentation describing the process and results, including Government participation if applicable, of any third-party evaluation or self-evaluation of the